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FM USOFFICE PRISTINA
TO RUEHC/SECSTATE WASHDC PRIORITY 7848
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUCNDT/USMISSION USUN NEW YORK 1345
RHMFISS/CDR USEUCOM VAIHINGEN GE
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RHEHNSC/NSC WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC
RUFOANA/USNIC PRISTINA SR

C O N F I D E N T I A L SECTION 01 OF 02 PRISTINA 000806

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DEPT FOR DRL, INL, AND EUR/SCE, NSC FOR BRAUN, USUN FOR
DREW SCHUFLETOWSKI, USOSCE FOR STEVE STEGER

E.O. 12958: DECL: 12/05/2017

TAGS: [PGOV](#) [EAID](#) [UNMIK](#) [YI](#) [KV](#)

SUBJECT: KOSOVO: PROGRESS ON MISSING PERSONS AND FORENSICS

Classified By: COM TINA KAIDANOW FOR REASONS 1.4 (B) AND (D).

11. (C) SUMMARY: Presenting a unified front, USOP, the EU Rule of Law planning team (EUPT), UNMIK's Department of Justice (DOJ), UNMIK's Office of Missing Persons and Forensics (OMPF), and the International Committee of the Red Cross (ICRC) together persuaded the Ministry of Justice to scrap its wholly inadequate draft Law on Forensics and start anew with a better plan. Now there will be two forensics-related laws. The first will provide a simple legal framework for the planned merger of the Forensics Institute with the OMPF into a Kosovo Ministry of Justice executive agency in a manner amenable to MoJ, OMPF, UNMIK DoJ, and ICRC. The second law, which our U.S. DOJ/ICITAP program will help to draft and vet, will deal with the technical details of forensics and forensic evidence in both the missing persons/humanitarian and criminal context. We are pleased with this outcome and will focus on getting the best possible legislative result in the months ahead. END SUMMARY.

12. (SBU) Kosovo's forensics competencies have long been scattered among various agencies, including the Ministry of Health's Forensics Institute, the mixed UNMIK Department of Justice-PISG Ministry of Justice OMPF, and the USG-funded, state-of-the-art police forensics lab. In addition, Kosovo's legal framework for protecting the chain of evidence in criminal forensic matters is not up to international standards for admissibility in court. As forensics competencies are transferred from internationals to Kosovars and from UNMIK to an EU mission, the time has come for a more coherent system.

13. (SBU) The Ministry of Justice made an effort to cover all the bases in its draft law on Forensics. Unfortunately, MoJ does not have the required forensics expertise in-house, and it also neglected to include key stakeholders such as OMPF and ICRC in discussions of the law. To rectify the situation before the law moved on to approval at the Prime Minister's office or the Assembly, USOP convened a stakeholders meeting with EUPT, ICRC, UNMIK, and OMPF to find a new approach.

14. (SBU) During the November 21 meeting, UNMIK agreed that it would be more efficient to start again with a new forensics

law than attempt to fix the problems in the current draft. Hopeful that this would be the outcome, we were prepared and immediately offered ICITAP's in-house legal and forensics expertise to assist in drafting the technical and evidentiary aspects of a new law.

¶5. (C) The most politically sensitive aspect of the draft law is the disposition of forensic capacity in Kosovo. The draft envisions the creation of an executive agency within the Ministry of Justice to deal with missing persons and forensics. This would allow for the higher pay necessary to retain local forensics experts, and the agency would be formed by merging OMPF with the Forensics Institute (FI). (NOTE: The FI was traditionally the locus of all forensic capacity in Kosovo. However, in 2002, all but one FI doctor refused to join OMPF, objecting to the training and evaluation requirements. As a result, FI has not conducted autopsies in five years; FI doctors teach instead. END NOTE.)

¶6. (C) The previous draft law put the FI in the lead and paved the way to re-institute regressive practices, such as the lucrative virginity tests (prior to marriage) the FI once carried out, enforced 6- rather than 8-hour workdays, and elimination of nurse staffing on weekends. (NOTE: Prior to the OMPF, forensic examinations were uniformly conducted by male doctors and only available from 8am-2pm on weekdays. A rape victim who called on Friday afternoon would thus be forced to wait until Monday morning before being examined. END NOTE.) Where the previous draft law put FI staff in the lead, we envision much-simplified language to merely create the executive agency and get the merger underway. This will allow all parties to sort out the politically divisive details with administrative instructions that will not be hashed out in Assembly committees.

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¶7. (SBU) Given the scope of needed forensics legislation, it makes more sense to separate the technical and evidentiary forensics law from the political and organizational one, and this was the decision taken by stakeholders in the meeting on November 21. The same group made this proposal to outgoing Justice Minister Salihaj on November 23; he agreed. In the coming weeks, MoJ will send a new draft of the merger law to all the stakeholders for comment. An ICITAP legal and forensics expert will begin work on a new draft of the evidentiary legislation.

¶8. (SBU) COMMENT: USOP is pleased with this outcome and will focus on getting the best possible legislative result in the months ahead. Forensics capacity is an integral part of the process of identifying missing persons from the 1999 conflict; the resolution of the remaining 2,037 missing persons cases is often cited by the deeply affected communities on both the Kosovo Albanian and Serb sides as a prerequisite for peaceful returns or any normal neighborly relationship. This makes it a highly political and sensitive issue, and we are eager to establish a legislative framework to facilitate its resolution. END COMMENT.
KAIDANOW